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February 9, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

*Hearing Officer's Decision*

Name of Case: Personnel Security Hearing

Date of Filing: July 10, 2006

Case Number: TSO-0407

This Decision concerns the eligibility of XXXXXXXXXXXX ("the Individual") for continued access authorization. The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's suspended access authorization should be restored. For the reasons detailed below, it is my decision that the Individual's access authorization should not be restored at this time.

I. FACTUAL BACKGROUND

The Individual has worked for a DOE contractor and held a security clearance for about ten years. In 2000, the Individual's marriage began to disintegrate. In September 2000, he was arrested for domestic violence and reported the arrest to the local security office (LSO). DOE Ex. 15.

The LSO interviewed the Individual, DOE Ex. 25, and referred him to a DOE consulting psychiatrist. The DOE psychiatrist interviewed the Individual in 2001 and diagnosed an adjustment disorder. The psychiatrist noted the Individual's rehabilitation activities - anger management and Prozac therapy - and opined that the Individual was "psychiatrically cleared." DOE Ex. 11 at 3-4.

In 2003, in conjunction with a reinvestigation for an upgrade of his clearance, the Individual completed a questionnaire for national security positions (QNSP). In response to questions about illegal drug use, the Individual answered "No." DOE Ex. 22 at 8.

In 2004, an incident occurred that raised concerns about the Individual's anger management. The LSO interviewed the Individual, DOE Ex. 24, and asked for a release of medical records. The Individual refused to provide the release, and the LSO documented that failure as a basis for termination of the clearance process. DOE Ex. 13.

Shortly thereafter, the Individual provided the requested release for medical records and filled out a new QNSP (the 2005 QNSP). On the 2005 QNSP, the Individual disclosed amphetamine use during 2000.

The Individual's disclosure of his 2000 amphetamine use prompted the LSO to refer him to a DOE psychiatrist. The DOE psychiatrist did not diagnose a substance abuse problem or mental condition that could cause a defect in judgment or reliability. DOE Ex. 10.

In 2006, the DOE notified the Individual that his illegal drug use and false answers on his 2003 QNSP raised security concerns. DOE Ex. 1 (the Notification Letter). The DOE cited three criteria. 10 C.F.R. § 710.8(k) (Criterion K, illegal drugs); *id.* § 710.8(f) (Criterion F, falsification); *id.* § 710.8(l) (Criterion L, dishonesty).

The Individual requested a hearing, and I was appointed to serve as the hearing officer. At the hearing, DOE Counsel did not present any witnesses. The Individual testified and presented 7 additional witnesses: an Employee Assistance Program (EAP) counselor, three workplace colleagues, two friends, and his girlfriend. In addition, he submitted medical records and a letter from his ex-wife.

## II. THE HEARING

### A. The Individual

The Individual testified that in 2000 he was having marital problems that started to affect his job. Tr. at 8. The Individual's supervisor recommended that he go to the contractor's Employee Assistance Program (EAP) "to get some time off and take care of this problem." *Id.*

The Individual testified that he contacted an EAP counselor (EAP Counselor 1). Tr. at 8. He told her about his marital problems and drug use, and she recommended that he seek outside help. *Id.* According to the Individual, EAP Counselor 1 stated that he "didn't want to get caught up" in the contractor's EAP. *Id.*

The Individual testified that, in addition to anger management counseling, he enrolled in a chemical dependency program and, after a month, attempted to return to work. Tr. at 8. The Individual testified that he was not ready and ended up taking off work for another month. *Id.* He testified that he continued to progress in recovery. *Id.*

The Individual testified that when he met with EAP Counselor 1 to obtain a release to return to work, she asked him if he had reported his drug use:

[S]he asked me if I reported this to DOE, and I said, "No, not yet." She said I was supposed to do that within three days. I asked her, "What should I do?" She asked me -- she asked me if I took care of the problem, and I said -- my response was, "I still am, through the chemical dependency program at [my health care provider]." She didn't tell me not to report it, but we came to the conclusion that I would not.

Tr. at 9. He testified: "I was the one responsible for the final decision." *Id.*

The Individual testified that when he filled out the 2003 QNSP, he "didn't know what to do." Tr. at 9. He did not report it "because I didn't report it when I was supposed to. That was a big mistake, because knowing that I had lied to DOE about the drug use, this has been on my conscience every day for the last six years." *Id.* at 9-10.

The Individual testified that he "finally did what was right" and reported the drug use to DOE and the DOE psychiatrist, "knowing what was going to happen." Tr. at 10. He further testified: "The only reason I'm going through with this hearing, knowing that I was in the wrong, is that the accusations of being a threat to national security ... are not true." *Id.* The Individual testified that he "would never compromise the national security of this country for any reason whatsoever." *Id.*

DOE Counsel asked the Individual for an update on the issue of therapy and his family situation. Tr. at 39. The Individual stated that he was taking Prozac and seeing an EAP counselor (EAP Counselor 2). *Id.* The Individual stated that he had little to do with his ex-wife, had a good relationship with his live-in girlfriend, and had an improved financial situation. *Id.* at 39-43.

The Individual attributed his 2000 amphetamine use to stress associated with the breakdown of his marriage, and stated that he would not use illegal drugs again. Tr. at 46.

DOE Counsel also asked questions to elicit the chronology of events related to the Individual's failure to disclose the drug use. DOE Counsel referred the Individual to a question posed by the security specialist at the 2004 personnel security interview. Tr. at 26-27. The Individual agreed that he should have disclosed that his counseling included chemical dependency. *Id.* After a review of the chronology, the following interchange occurred:

Q: ... And then basically from then [the time of illegal use] on, the problems and the chronology that I went over revolved around your trying to keep the government from knowing that you'd used the drugs?

A: I just felt that it was too late to disclose it, that I'd already hidden it from them, and I knew that this was what was going on happen, and I didn't want this -- I didn't want this.

Q: Okay.

A: But then it -- it ate at me every day, every day, every day, and I finally just decided to tell them, you know.

Q: It sounds like, from the chronology, that what ultimately made you tell them was that they found out because you had to give them the records?

A: They didn't find out. They didn't find it. I told them. I disclosed it to them. They wouldn't have found out.

*Id.* at 47. The Individual concluded by stating that "it's off my back now, so it makes me feel better."

#### B. EAP Counselor 2

EAP Counselor 2 testified that she is a psychologist and manager of her employer's EAP. Tr. at 53-54. She has seen the Individual since 2004 and has been treating him for depression. *Id.* at 55-57. She testified that agitated depression had accounted for part of his anger management issues. *Id.* at 57. With the medication "there has been pretty significant success, in my mind, and so,

really, it's [the counseling's] just become just kind of a checking in, seeing how he's doing, see, you know, if he has any other needs that I can help make recommendations on." *Id.* at 57.

EAP Counselor 2 was aware of the 2000 illegal drug use, and her assessment was that "he's been in recovery since that time." *Tr.* at 59. EAP Counselor 2 characterized the prior use "as self-medicating of the depression." *Id.* at 60. She testified that she has seen a commitment to addressing the depression through medication and counseling. *Id.*

EAP Counselor 2 testified that she usually reminds individuals of their obligation to report substance abuse. *Tr.* at 61. She testified that it would be improper for one of the EAP counselors to advise someone not to report substance abuse. *Id.* at 63. When asked about the Individual's testimony that he and EAP Counselor 1 concluded that he would not report his drug use, EAP Counselor 2 stated:

- A. It doesn't surprise me.
  - Q. That does not surprise you?
  - A. No, it does not.
- XXXXXXXXXX

*Id.* at 64. EAP Counselor 2 testified that the Individual is honest:

My experience with him is that he has consistently tried to explore what is the right thing to do, what do I need to do, what's important to do ... and has sought help, has followed recommendations.

[H]e's here ... because he was honest, at a point where he's developing more insight, ... getting more grounded in things, ... dealing with his depression, and, ... I think there has really been a shift, because of the management of what he's doing for his life.

*Id.* at 65-66. In response to questions from DOE Counsel, EAP Counselor 2 acknowledged that her discussions with the Individual indicated that his desire to keep his job was a factor in his decision to disclose the drug use. *Id.* at 71-72.

## C. Workplace Colleagues

### 1. The Individual's Supervisor

The Individual's supervisor testified that he has worked with the Individual for six years and sees him every day. Tr. at 78-79. The supervisor was aware of the nature of the security concerns. *Id.* at 79-81. About a year ago, the Individual told him about amphetamine use some years earlier and the Individual's failure to disclose it on his QNSP. *Id.* at 81-82. The supervisor stated that he has never had any reason to believe that the Individual used illegal drugs. *Id.* at 82.

The supervisor testified that the Individual told him that he falsified the QNSP because he feared it would affect his employment. Tr. at 82. The supervisor sees "a big difference" since then in the way the Individual thinks things through. *Id.* at 83.

The supervisor testified that he believes that the Individual is honest. The supervisor testified that the Individual is as

easy and comfortable to work with, as far as his honesty, as anybody I've worked with. You know, he -- I've never known him to lie to me about anything. Like I said, as far as his integrity and honesty, you know, he's as good as anybody I've worked with.

Tr. at 87. The supervisor stated that when the Individual makes a mistake on the job, "he doesn't try to hide it from me, he comes to me, 'Hey, I screwed up.'" *Id.* at 88.

As for the Individual's falsification of the 2003 QNSP, the supervisor stated that the Individual told him that it

bothered him from the day that he'd put that down on the paper that he didn't use drugs, and it was with him every day that he worked, he said, and I believe him, because - - I don't know -- because he's tried to do the right thing from the day that I've known him.

*Id.* at 91. The supervisor concluded: "I think he's been caught in a bad situation a few times that he had no control over, and maybe he didn't make the best choices at that time." *Id.* at 92.

## 2. Co-worker 1

Co-worker 1 stated that he has seen the Individual at least once a week for the last four years. Tr. at 104. The co-worker indicated that he knew that the hearing concerned the Individual's denial of drug use on a security questionnaire. *Id.* at 105-07. The co-worker indicated that he believed that the Individual was honest and stated: "He's never lied to me." *Id.* at 108. The co-worker indicated that the Individual was very reliable: "He finishes a job when he's supposed to." *Id.* He indicated that he has never seen any indication or evidence of drug use. *Id.* The co-worker stated that he did not believe that the Individual would jeopardize security. *Id.*

## 3. Co-worker 2

Co-worker 2 testified that he sees the Individual "several times a week" since 2004. Tr. at 113-14. The Individual testified that he has never known the Individual to use illegal drugs. *Id.* at 115. The co-worker believed that the issue in the hearing was about the Individual's effort "to change some information, I guess, on his clearance papers" but he did not know what the information was. *Id.* at 115-16. When asked if the Individual was an honest person, the co-worker stated: "Absolutely." *Id.* at 116. The co-worker has asked him to "watch over a job" or "make sure that a job gets done on time" and the co-worker has "never had a problem with him following through." *Id.* The co-worker stated that they have worked together on jobs outside of work. *Id.* at 117. The co-worker stated that the Individual was "absolutely not" a threat to national security. *Id.* at 118.

## D. The Individual's Friends

### 1. Friend 1

Friend 1 has known the Individual since the 1980s. Tr. at 95. The friend is his former brother-in-law: the Individual's ex-wife is the sister of the friend's ex-wife. *Id.* The friend is also the godfather of the Individual's daughter. *Id.*

The friend described the breakdown of the Individual's marriage. "Well, he was very hurt ...." Tr. at 97. The friend stated that the Individual was "a stand-up guy." *Id.* at 97. The friend described the Individual as "an extremely honest person." *Id.*

The friend testified that he had never known the Individual to use illegal drugs. *Id.* at 98. The only thing he knew was that the breakdown of the Individual's marriage was a difficult time:

I know he really hit a bump in the road there, and I know I really talked hard with him back during those times to help get him to get his life back on track again. He loved his wife extremely, and it was just a rough time for him, you know, three kids ....

*Id.* The Individual's friend stated that he did not believe that the Individual would resort to illegal drugs if another stressful situation occurred. *Id.* at 101.

## 2. Friend 2

Friend 2 stated that he has known the Individual for a "good 13 years." *Tr.* at 127. They used to socialize together and now work together on jobs associated with the friend's business. *Id.* at 127-29. The typical work day lasts 12 hours; they have breakfast, lunch, and dinner together; and sometimes the Individual stays at his house. *Id.* at 132. The friend testified that the Individual was honest and reliable. *Id.* at 132-34.

## D. The Individual's Girlfriend

The Individual's girlfriend testified that she has known the Individual for about ten years, but they have been together since 2002. *Tr.* at 137. She testified that the Individual is honest and trustworthy. *Id.* at 138. The Individual "raised his children to be honest, and they turned out wonderful" and "He's honest with me." *Id.* She testified that he has done "nothing whatsoever" to make her doubt his honesty. *Id.*

The girlfriend testified that she and the Individual are "homebodies" and do projects around the house. *Tr.* at 139. She testified that they do not go out socially too often. *Id.*

The Individual testified that she has never seen the Individual use any type of illegal drugs. *Tr.* at 139-40. She testified that it "really bothered him" that he had not disclosed the earlier drug use so he "just came clean with it." *Id.* at 142. She testified that "even now that he's going through this, he's still relieved that he said something about it." *Id.* at 144.



### III. APPLICABLE STANDARD

Under Part 710, the DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). In that case, the individual has the burden to prove that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *Id.* § 710.27(a).

Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. In considering derogatory information, the DOE considers various factors including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. *Id.* § 710.7(c). The ultimate decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. *Id.* § 710.7(a). In making that decision, I am guided by the adjudicative guidelines. See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines).

### IV. ANALYSIS

#### A. The 2000 Amphetamine Use

The Individual's amphetamine use in 2000 is undisputed. The Individual disclosed that use, and the use constitutes derogatory information under Criteria K and L. 10 C.F.R. § 710.8(k), (l); Adjudicative Guidelines, Guideline H.

The Individual has resolved the concern arising from his amphetamine use. The Individual's use was limited to a two-month period in 2000 when his marriage was disintegrating. He enrolled in a counseling and chemical dependency program, which he completed over the fall of 2000 and the spring of 2001. See August 30, 2006 letter from health care provider and related documents. The DOE psychiatrist was aware of this background and did not diagnose the Individual with a substance abuse problem or a mental condition that could cause a defect in judgment or reliability. The following factors convince me that the Individual's use of illegal

drugs is in the past: the short duration of the use, the Individual's initiative in seeking counseling, his recovery since that time, and the DOE psychiatrist's opinion. Accordingly, I conclude that the Individual has resolved the concern arising from that use. See Adjudicative Guidelines ¶ 26(b) (demonstrated intent not to use drugs in the future), ¶ 26(d) (completion of prescribed treatment program and favorable prognosis).

#### B. The 2003 QNSP Falsification

It is undisputed that the Individual gave false answers on the 2003 QNSP. Those false answers give rise to a security concern under Criterion F. See *Personnel Security Hearing*, Case No. TSO-0368, 29 DOE ¶ 82,973 (2006).

On the positive side, I note that the use became known to DOE in late 2004 or early 2005. I also note the Individual's positive steps to address psychological problems that may contribute to poor decision-making. See Adjudicative Guidelines ¶ 17(d). Finally, I note the testimony from the Individual's witnesses that the Individual is honest and trustworthy. I believe that those witnesses testified honestly and candidly.

At this time, however, I am not convinced that the Individual has resolved the concern. The Individual disclosed the use only when the alternative was to lose his clearance and his job. Given that fact and the relatively recent nature of the disclosure, the evidence is not clear and convincing evidence of a sustained pattern of responsible behavior. See generally Adjudicative Guideline ¶ 17 (mitigating factors).

#### V. CONCLUSION

The Individual has resolved the security concerns arising from his 2000 amphetamine use. The Individual has not resolved the security concern arising from his falsification of the 2003 QNSP. Accordingly, I cannot conclude that the Individual's access authorization should be restored at this time. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Janet N. Freimuth  
Hearing Officer  
Office of Hearings and Appeals

Date: February 9, 2007